BEFORE INDEPENDENT HEARING COMMISSIONERS APPOINTED BY THE NELSON CITY COUNCIL

IN THE MATTER OF	The Resource Management Act 1991 (**RMA** or **the Act**)
AND	
IN THE MATTER OF	Hearing of Submissions and Further Submissions on Plan Change 29 to the NRMP
AND	
IN THE MATTER OF	Submissions and Further Submissions on Proposed Plan Change 29 by **BAYVIEW NELSON LIMITED** **GP INVESTMENTS LIMITED** **NELSON NORTH LIMITED** **SUFFOLK HEIGHTS LIMITED** **588 LIMITED**

MEMORANDUM FOR THE COMMISSIONERS

McFADDEN McMEEKEN PHILLIPS
LAWYERS

Level 2, 241 Hardy Street
Nelson
P O Box: 656
DX: WC 70016
Phone: +64 3 548 2154

Solicitor: Nigel McFadden
(nm@mmp.co.nz)

May it please the Commissioners:

1. Whilst Counsel appreciates that this Memorandum is not solicited by the Commissioners, it has been prepared as a result of having considered Council's Reply of 28 November 2024.

2. Joint Witness Statement

2.1 In the Joint Witness Statement ("JWS") (Part 2) of 25 November 2024 Ms Sally Hargraves, Mr Cameron Lines and Mr Mark Lile ("ML") - attachment 1 is the geomorphic input review undertaken by GeoSolutions (Ms Hargraves - "SH") and Baseline Geotechnical (Mr Lines - "CL"). The JWS (Part 2), at 3.1.3.3 states: -

> "*SH, CL and ML consider that the current maps are compromised by a combination of: inadequacy of and inconsistent application of stated methodology, inaccuracy and lack of independent peer review of geomorphic mapping, and the inability of experts to be able to replicate or verify a mapping outcome. SH, CL and ML further consider that the above could only be addressed by a new Schedule 1 RMA process that did not rely on in-plan maps. By way of clarification SH, CL and ML are not opposed to an outcome that included out of Plan maps, or rules that can comprehensively manage slope instability without needing in-plan maps".*

3. The Chamberose Reply

3.1 In the Council's Reply (Dan Chamberose) in Appendix A has taken the position that the areas of concern are simply "*requests for change*". To the contrary, it is clear from the statement in the JWS Part 2 that SH, CL and ML are showing that the mapping (on the examples they were given) is considerably flawed, and they are saying that there are so many issues with the geomorphic interpretation that the rest of the geomorphic mapping can't be trusted. Their position is that the entire mapping needs to be done right from scratch, with an appropriately detailed landslip inventory and accurate geomorphic mapping.

3.2 No complete set of the geomorphic mapping was provided to SH, CL and ML by Mr Chamberose, only *"an example*" which is what the SH and CL review had to be based on.

Dan Chamberose in his Reply, attempted to justify the accuracy of the mapping by saying they have used a "*live*" geological map by Johnston, Ghisetti and Wopereis - 2021 version. This was not referenced in the Beca reporting or in the methodology provided by Beca. This is not how a scientific assessment should be carried out. The scientific method requires that results be documented so that they are both accurate and reproduceable.

3.3 At A7 Mr Chamberose confirms in his Reply that they were aware that the area at issue was an earth flow due to "*in-house knowledge*". However, in previous rebuttal evidence Mr Chamberose has discounted the observations of SH and ML on the basis of "site specific knowledge". This is exactly what Beca have done in this instance with undocumented "in-house knowledge".

Mr Chamberose repeatedly pushes back saying that the objection is only on the basis that SH and CL have "*in-house knowledge*" - in fact, that knowledge must also be available to Dan Chamberose and thus should be disclosed.

3.4 At A8 and A24 Dan Chamberose has said that the SI-TAG knowledge was used but it "*wasn't documented"*, and the geomorphic layers weren't updated with that information, stating that these are "*well-known areas of instability*" even although they are not documented on any geological map or in Beca's own geomorphic layer or slip database. This is not the way a scientific assessment is done, if to be done properly.

3.5 The issues above suggest a haphazard and unscientific approach to the assessment, which provides a multitude of avenues for errors to result from the assessment. At its heart, the scientific method suggests that results should be well documented so that they are both accurate and reproduceable. The undocumented SI-TAG information, the undocumented published geology, the undocumented in-house knowledge are all examples of poor practice, it fails to meet the requirements of section 32.

3.6 At A9 Dan Chamberose diverts attention away from the accuracy of the large-scale, deep-seated landslide mapped in this location, by suggesting that it doesn't matter because it would be in a combined overlay anyway. This site is not steeper than 35 degrees and does not show geomorphic evidence of instability. We contend that it should actually be excluded from the overlay in its entirety, were it not for the deep-seated instability shown by BECA.

3.7 At A10 Mr Chamberose points out extra slip features that he recognises were not in the inventory – it appears this new information conveniently helps to *"justify"* the classification.

3.8 At A20, Mr Chamberose has picked up on the steeper slope that had been excluded from the mapping but should have been included in the mapping based on the methodology; but he has missed the fact that this is an engineered slope and should therefore not be included at all.

3.9 At A22, Mr Chamberose has missed the point that the faults to be used for stability assessment can be entirely different to and separate from those used in the deformation/awareness mapping. He has also missed the point that the longer recurrence interval faults present the bigger risk in terms of stability rather than fault rupture, but Beca seems to have them around the other way – there is no consistency between the documents around which faults are of importance.

3.10 Mr Chamberose states: -

> "*the mapping of features is not considered to be an exhaustive record of all instability in the region but is sufficient to show the classification and distribution of slope instability on hill slopes in the region"*

That may be true if the work done was accurate, but it is not, and therefore when important information is missed, then an inaccurate assessment of features mapped will follow, Mr Chamberose's statement quoted above cannot be justified.

3.11 In Mr Chamberose's Appendix B entitled "*Example areas that qualify as certified earthworks landform areas*" the title is misleading as the areas are only areas that are proposed to be included "*now or in the future*" - they are not examples. Council has been very clear that no more previously earth-worked land would be added. There is error in their assessment of CELF land. Stage 15 of Bayview has not been included in the CELF guidance, despite having received S224C certification in Feb 2023, with titles issued in March 2023. This stage of the Bayview development meets all the criteria under 8.6 a) and b) of Dan Chamberoses response. It is unclear why it has been excluded, particularly so late in the process following the submitters efforts to correct the information used.

3.12 In the text of his response Mr Chamberose frequently refers to the "*peer review*" that was conducted. That peer review did not review the geomorphic mapping, and it only reviewed an early version of the methodology (the 2020 version), it did not review the 2021 version. It cannot be claimed that the version of the report used to support PC29 has been peer reviewed, it hasn't been.

3.13 At 5.23 of his Reply, Dan Chamberose accepts that areas of mapped instability, that have a slope angle of less than 20 degrees have been excluded from the overlay. At 5.24 he suggests that at a future stage it may be appropriate to include these areas. The outcome is that, right now for PC29 we have the absurd situation where properties, known to be located on historical landslide debris have been excluded from the overlays, while other properties that show no geomorphic evidence of ever being affected by instability are included.

3.14 The above are just some of the examples of inaccuracies and misleading information contained in the Reply. Further examples can be provided on request.

4. <u>The Carter Reply</u>

4.1 Turning now to the reply evidence of Janice Carter for Nelson City Council.

4.2 Ms Carter has also prepared reply evidence in her role as a planner. It is necessary to provide some comment on that evidence also, particularly given the evidence of Mr Chamberose addressed above.

(i) The Hazards Group raised concern over the slope instability mapping, which has now resulted in Council confirming this was incorrectly mapped with some 1100 properties now removed. This confirms that the process followed by the Council is not reliable at even the most basic or broad level. At paragraph 12 Ms Carter says that the changes made to the Slope Management Overlay are necessary and appropriate, and is now accurate. As set out above, there any many other anomalies in the SMO that need to be addressed before the overlay can be deemed necessary and appropriate (section 32) given the acknowledged consequences on insurance and lending that Ms Carter has finally accepted.

(ii) Ms Carter addresses the CELF in section 3.3 of her Reply Evidence. We do not agree that the Bayview and Bishopdale subdivisions are the only subdivisions that should be excluded. As noted above, the error in the CELF for Bayview at this late stage in the process further compounds the concerns raised (from the outset) that Council has not taken care to use information that has long been available, i.e since October 2022 with respect to the Bayview subdivision.

(iii) Section 3.4 of Ms Carters reply serves to shine light on the primary purpose of the SLO, being identified as land to be captured by the planning framework for Natural Hazards, that being a "*red flag*" for the insurance and lending industries. This is despite the current rules of the NRMP already containing very similar rules for earthworks with a 1.2m trigger and the use of a Land Management Overlay. The duplication and repetitions between the current unchanged rules and the now proposed rule is considered to lead to a very confusing and inefficient planning outcome.

(iv) Significantly, in section 3.7 of the Reply Evidence, Ms Carter highlights the significant impacts that natural hazard mapping is having on insurance and mortgage lending. The growing concerns acknowledged in paragraph 54 of Ms Carters evidence confirm the importance of ensuring the correct and accurate mapping of natural hazards. Indeed, Ms Carter states:

> *" .. I agree that mapping needs to be as accurate as is reasonably possible, whether it influences insurance premiums or not"*

We agree, which has been a core part of the concerns raised by the submitters from the outset.

4.3 Ms Carter however than goes on to say:

> *"As indicated in the evidence of Mr Chamberose, it is not practical or reasonable to expect Councils to bear the cost of mapping over a wide area at the site-specific level".*

With respect, the errors identified by Mr Lines and Dr Hargraves are so wide ranging that they show the maps have no scientific basis. The mapping undertaken by BECA falls entirely short of what Ms Carter herself considers is necessary. The mapping should have at least undergone an independent peer review, which it has not, and which is a glaring fault when considering the errors identified on the few geomorphic map examples shared with the submitters to consider only some 2 working days before expert conference on the matter.

5. The Commissioners may have seen the Stuff article of 3 December. In that article Mandy Bishop of Nelson City Council is attributed as having said: -

> *"Council's group manager environmental management, Mandy Bishop, said that the work developing and refining the maps and overlays is carried out by technical experts and is peer-reviewed.*
> *"[The revised maps are] now being considered as part of the PC29 process and council has full confidence in the technical analysis provided by experts.""*

but that is simply not so. The CGW peer review focused on the methodology. It did not review the geomorphic basis for the assessment. Further, CGW reviewed an earlier (2020) version of the Beca reporting. The subsequent changes in the methodology, between the 2020 version and the 2021 version are very substantial, such that the methodology is significantly different from that reviewed. The CGW peer review is simply no longer relevant to the version of

the report currently being used (2021 & later). The latter version of the report cannot be claimed as having been through a thorough, independent peer review.

6. We have forwarded this Memorandum so that the opportunity can be given for the Commissioners to have correct information placed before them by Nelson City Council, so that a proper and complete section 32 analysis can be undertaken, and the appropriateness of the change in terms of section 32 considered in the context of that complete information.

NA McFadden
Counsel to Bayview Nelson Limited, GP investments Limited, Nelson North Limited Suffolk Heights Limited and 588 Limited

Date: 11 December 2024